

RRD Operational Memoranda



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PRESENTATION OBJECTIVES



CLEANUP PROGRAM OPERATIONAL MEMORANDA:

- Why program uses operational memoranda
- Process used to develop operational memoranda
- Challenges with development and implementation



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CLEANUP PROGRAM HISTORICAL OPERATIONAL MEMORANDA

1982-1990
1990-1995
1995-2002
2002-2008

Background and detection limits

Type A, B, C cleanups

Part 201 (ERD) and Part 213 (STD)
Operational Memoranda

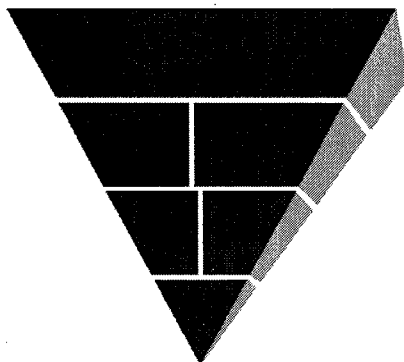
RRD Part 201 and Part 213
Operational Memoranda



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CLEANUP PROGRAM OPERATIONAL MEMORANDA



- Allow complex technical and legal requirements to be provided in simpler English
- Provide more detail than statute and rule construction allow
- Provide predictability and consistency for program implementation
- Provide efficiency in communication of information necessary for program implementation



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

- **Allow complex technical and legal requirements to be provided in simpler English :**
 - Less formal language than statutory or rule construction allow
 - Ability to use common acronyms and abbreviations
 - Ability to specifically reference other laws and rules



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

- **Provide more detail than statute and rule construction allow:**
 - Ability to include reference information
 - Ability to provide web page links for relevant references
 - Ability to provide examples
 - Ability to use figures to supplement text



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

- **Provide predictability and consistency for program implementation**
- **Provide efficiency in communication of information necessary for program implementation**



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EXAMPLE OF LEVEL OF DETAIL IN STATUTE, RULES AND GUIDANCE DOCUMENTS

CLEANUP CRITERIA:

- Statutory provisions: Section 20120a & 21304a
- Rule provisions:
Part 7 Rules Cleanup Criteria Requirements
- Operational Memorandum No. 1 and Technical Support Documents
- Cleanup Criteria Training Materials



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

Special considerations for cleanup program:

- Part 201 "Nike" provision
Section 20114(2) a person may undertake response activity without prior approval of the MDEQ ...
- Part 213 implementation by QC/CPs with MDEQ audit provisions for closure reports
 - Actions against QC/CPs for failure to comply with Part 213 and Part 215



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

R 324.21501 (h) "Other cause" under sections 21542 and 21543 of the act, for which the MDEQ may suspend or revoke a qualified consultant or certified professional certification, means and includes, but is not limited to, ... and all of the following acts:

(iv) Failure to comply with parts 213 and 215 of the act and written directives issued by the department in conformance with parts 211, 213, and 215 of the act, including, but not limited to, any of the following:

(A) Operational and informational memoranda.

(B) Procedures.

(C) Guidance documents.

(D) Orders.

(E) Written correspondence from department staff requesting information about a facility or site.



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Special considerations for cleanup program:

- Statutory requirement at odds with rulemaking:
 - Section 21026(8) requirement that MDEQ establish minimum technical standards for BEAs in guidelines pursuant to the APA



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

Special considerations for cleanup program:

- Specific rule provisions for publishing or effectively notifying interested parties about changes for criteria or target detection limits



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

Cleanup Criteria Table Revisions

- Revisions to published cleanup criteria and footnotes to the tables allowed under R 299.5706a(10)-(12)
- If cleanup criterion is developed or revised the MDEQ must make available by announcing it on the MDEQ webpage, publishing notice in the MDEQ calendar or by such other means that effectively notifies interested parties R 299.5706a(13)



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Target Detection Limits

- Target Detection Limits means the detection limit for a hazardous substance that is specified by the MDEQ on a list that it publishes no more than once a year. The MDEQ must identify one or more analytical methods, when available, that are judged to be capable of achieving the target detection limits.

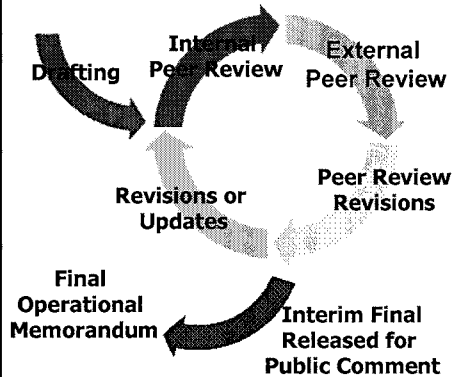
R 299.5103(L)



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RRD OPERATIONAL MEMORANDA DEVELOPMENT PROCESS



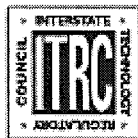
- Drafting
- Public Input Process
- Public Dissemination Process
- Challenges with Development



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RRD OPERATIONAL MEMORANDA DEVELOPMENT PROCESS



Ground Water Monitoring & Remediation®



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- Drafting
 - RRD internal teams
 - Available EPA and other state resources
 - Other published information
 - DEQ staff peer review
 - Management review

RRD OPERATIONAL MEMORANDA DEVELOPMENT PROCESS

- **Public input process**

- Peer review of Draft Operational Memorandum
 - Input on recommendations to make the documents clear, feedback on issues associated with the practical application of the direction in the guidance, and recommendations to address practical application issues.
- Review and comment on Interim Final Operational Memorandum
 - Six month comment period



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RRD OPERATIONAL MEMORANDA DEVELOPMENT PROCESS

- **Public dissemination process**

- Information regarding Operational Memorandum updates provided via the MDEQ list server
- Information regarding Operational Memorandum updates included in RRD Newsletters
- Routine requests for presentations regarding updates and status



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RRD OPERATIONAL MEMORANDA DEVELOPMENT PROCESS

**OpMemo No. 1 Criteria and
Technical Support Documents**

OpMemo No. 2 Sampling & Analysis

OpMemo No. 3 Part 213 Site Classification

OpMemo No. 4 Site Characterization

OpMemo No. 5 Venting Groundwater

**OpMemo No. 6 Land & Resource Use
Restrictions**



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RRD OPERATIONAL MEMORANDUM No. 1

Criteria & Technical Support Documents (TSD)

- Attachment 1: Tables of Cleanup Criteria
- Attachment 2: List of Revisions to Tables
- Attachment 3: Drinking Water Criteria TSD
- Attachment 4: Groundwater Contact Criteria TSD
- Attachment 5: Vapor Intrusion TSD
- Attachment 6: Soil Direct Contact TSD
- Attachment 7: Soil Inhalation Criteria for Ambient Air TSD
- Attachment 8: C_{sat} Concentration TSD
- Attachment 9: Soils Protective of Groundwater Criteria TSD
- Attachment 10: Groundwater Protection Criteria TSD
- Attachment 11: Flammability and Explosivity Screening Levels and Acute Inhalation Screening Levels TSD

Issued December 2004



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RRD OPERATIONAL MEMORANDUM No. 1 DEVELOPMENT PROCESS

Criteria & Technical Support Documents

No external review process for development

- Criteria are developed by the MDEQ in accordance with rule provisions
- Technical support documents provide the background for the assumptions contained in the rule provisions

Issued as final document

- Although not required, have provided 30-day comment period before finalizing values for new criteria



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RRD OPERATIONAL MEMORANDUM No. 2

Sampling & Analysis

- **Attachment 1: Target Detection Limits and Designated Analytical Methods**
- **Attachment 2: Soil Leaching Methods**
- **Attachment 3: Indoor Air Designated Methods and Target Detection Limits**
- **Attachment 4: Sample Preservation, Sample Handling, and Holding Time Specifications**
- **Attachment 5: Collection of Samples for Comparison to Generic Criteria**
- **Attachment 6: Sampling Methods for Volatile Organic Compounds**
- **Attachment 7: Low Level Mercury Sampling Specifications**

Issued October 2004; effective February 2005



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RRD OPERATIONAL MEMORANDUM No. 2 DEVELOPMENT PROCESS

Sampling & Analysis

Target detection limits (TDLs) and analytical methods are specified by the MDEQ in accordance with rule provisions

- MDEQ staff with laboratory expertise assist in the develop of the documents
- Draft TDLs and methods are reviewed by the Michigan Environmental Laboratory Association (MELA)

Issued as final documents

- Effective date for revisions to TDLs or methods is established to allow revisions in lab practices and/or project workplans



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RRD OPERATIONAL MEMORANDUM No. 2 DEVELOPMENT PROCESS

July 2007 revisions

- Released with list server note and posted on RRD webpage 7/20/07, effective 8/15/07

- Numerous questions received



- 8/14/07 extended effective date to 10/1/2007
- 9/28/07 reverted to 2004 version



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RRD OPERATIONAL MEMORANDUM No. 3 DEVELOPMENT PROCESS

Part 213 Site Classification

No external review process for development

- The Part 213 Site Classification has been established by the MDEQ consistent with the statutory requirement (Section 21314a) to establish and implement a classification system for sites considering the impacts on public health, safety welfare and the environment.

Issued as final document



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RRD OPERATIONAL MEMORANDUM No. 4

Site Characterization and Remediation Verification

- Attachment 1: Soil
- Attachment 2: Groundwater
- Attachment 3: Sediments *
- Attachment 4: Soil Gas and Indoor Air
- Attachment 5: Methane
- Attachment 6: Non-aqueous Phase Liquids (NAPLs)
- Attachment 7: Groundwater Modeling *
- Attachment 8: Monitored Natural Attenuation
- Attachment 9: In-Situ Injection
- Attachment 10: Groundwater Not In An Aquifer
- Attachment 11: Site Contaminated with Petroleum Products
- Attachment 12: Field Methods

*** Issued May 2006**



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RRD OPERATIONAL MEMORANDUM NO. 4 DEVELOPMENT PROCESS

Site Characterization

- Peer review process
 - Volunteer solicitation from professional organizations and via RRD list server announcements
 - Where comments require significant revisions have used additional peer review
 - Generally very positive comments about the process
- Peer review drafts are public documents, available upon request



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RRD OPERATIONAL MEMORANDUM NO. 5 DEVELOPMENT PROCESS

Groundwater Surface Water Interface

No external review process for development

- The GSI criteria guidance document is directly based on requirements of rule provisions.

Issued as final document



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RRD OPERATIONAL MEMORANDUM No. 6

Land and Resource Use Restrictions

Part 213 Institutional Controls

- Notice of corrective action
- Restrictive covenant
- Local ordinances
- Alternative mechanisms
 - Notice of aesthetic impact
- Notice to impacted parties of corrective actions
- Notice to local unit of government
- Sample Instructions
- Forms

Issued December 2007



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RRD OPERATIONAL MEMORANDUM No. 6 DEVELOPMENT PROCESS

Part 213 Institutional Controls

- Peer review process April 2006-June 2006
- Provided peer review forms with audits
- July 2007 removed old forms from webpage with note to contact district office for current forms
- Concern with use of "draft" guidance
- Document issued and posted on webpage December 2007



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CLEANUP PROGRAM OPERATIONAL MEMORANDA

Wisconsin DNR Remediation & Redevelopment Program Guidance Document Disclaimer:

This document is intended solely as guidance, and does not contain and mandatory requirements except where requirements found in statute and administrative rules are referenced. This guidance does not establish or affect legal rights or obligation, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any manner addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.



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RRD OPERATIONAL MEMORANDA DEVELOPMENT PROCESS



Challenge to balance

- Level of certainty -- predictable/flexible
- Level of repetition of statute and rule -- required/why required
- Level of detail -- necessary/important



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RRD OPERATIONAL MEMORANDA IMPLEMENTATION CHALLENGES

Internal implementation issues

- Staff training on technical content
- Previous division's reliance on QC/CP rule
- Program complexity
- Resource limitations



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RRD OPERATIONAL MEMORANDA IMPLEMENTATION CHALLENGES

External implementation issues

- March 2005 Internal RRD memo regarding application of Operational Memoranda
- Controversy over lack of Operational Memoranda on some subjects (e.g., saturated soils)



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Questions? Discussion?



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